

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
ICOM AMERICA, INC.	)	WT Docket No. 11-178
	)	
Request for Clarification of Section 90.187(b) of	)	
the Commission's Rules	)	

**ORDER**

**Adopted: June 12, 2013**

**Released: June 13, 2013**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a request from Icom America, Inc. (Icom) for clarification of the Commission's regulations regarding trunking in the bands between 150 and 512 MHz.<sup>1</sup> Specifically, Icom seeks guidance as to whether a 250-millisecond data burst would constitute "harmful interference" under Section 90.187(b) of the Commission's Rules, which provides trunked systems must provide a "level of monitoring . . . sufficient to avoid causing harmful interference to other systems."<sup>2</sup> For the reasons set forth below, we decline to provide the requested clarification.

2. *Background.* Icom requested clarification of whether a 250-millisecond data burst from a control channel idle message would constitute harmful interference.<sup>3</sup> It argued that the data burst should not be considered harmful interference because it "would be barely discernable white noise."<sup>4</sup> In response to a request from Wireless Telecommunications Bureau (Bureau) staff, Icom provided additional technical information about the contemplated operations.<sup>5</sup>

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<sup>1</sup> See Letter dated August 17, 2011 from Alan S. Tilles to Rick Kaplan, Bureau Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Request); Letter dated September 29, 2011 from Alan S. Tilles to Rick Kaplan, Bureau Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Supplement).

<sup>2</sup> 47 C.F.R. § 90.187(b).

<sup>3</sup> See Request at 1.

<sup>4</sup> *Id.*

<sup>5</sup> The data burst occurs every five seconds during idle time, but can be programmed to occur in the range of 3-10 seconds; the output power of the data burst is the same as the main transmitting signal; and each frame is 80 milliseconds. The "collect channel" (a channel that sends out a pulse for the roaming function) sends 6 frames, while the "home channel" (which acts in a manner similar to a home channel in a traditional trunked Logic Trunked Radio system) sends 4 frames. The frames include the site code, site overlap, and adjacent site information. See Supplement at 1-2.

3. The Bureau sought comment on Icom's request.<sup>6</sup> The Bureau asked commenters to address whether a blanket response as requested by Icom is appropriate, or if, instead, the determination of harmful interference requires a case-by-case analysis of each specific situation (such as the technical parameters of the stations in question, and the distance and terrain between them). It also sought comment as to, if a blanket response is suitable and a 250-millisecond data burst as described by Icom is not deemed to be harmful interference for purposes of Section 90.187(b), whether such operations should be permitted on Public Safety Pool frequencies.

4. The Bureau received four comments or reply comments. The Telecommunications Industry Association (TIA) supported Icom's request for a ruling that a 250-millisecond data burst does not constitute harmful interference on Industrial/Business Pool frequencies, but argued that the question should not be addressed with respect to Public Safety Pool frequencies without additional input from manufacturers and the public safety community.<sup>7</sup> Icom agreed with TIA.<sup>8</sup> Two other commenters opposed the request. Motorola Solutions (Motorola), Inc. argued that it would be inappropriate for the Bureau to issue a broadly applicable definition of the definition of harmful interference based on the detailed design parameters of one manufacturer's technology, and that potential interference should be evaluated on a case-by-case basis taking into account all relevant circumstances.<sup>9</sup> The Land Mobile Communications Council (LMCC) stated that Icom's request should not be granted without additional testing and input, but that whatever action ultimately is taken should apply equally to Industrial/Business and Public Safety Pool frequencies.<sup>10</sup>

5. *Discussion.* Section 90.187(b) of the Commission's Rules provides, "Trunked systems operating under this section must employ equipment that prevents transmission on a trunked frequency if a signal from another system is present on that frequency. The level of monitoring must be sufficient to avoid causing harmful interference to other systems."<sup>11</sup> Under Section 90.7 of the Commission's Rules harmful interference is defined as "any emission, radiation, or induction which specifically degrades, obstructs, or interrupts the service provided by such stations."<sup>12</sup>

6. The Part 90 technical and service rules, except for those that govern only a specific class of licensees, apply equally to all Part 90 licensees.<sup>13</sup> Consequently, we agree with LMCC that Section

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<sup>6</sup> See Wireless Telecommunications Bureau Seeks Comment on Icom America, Inc. Request for Clarification of Section 90.187(b) of the Commission's Rules as to Whether a Data Burst Constitutes Harmful Interference, *Public Notice*, WT Docket No. 11-178, 26 FCC Rcd 15141 (WTB MD 2011).

<sup>7</sup> See TIA Comments at 3-4.

<sup>8</sup> See Icom Reply Comments at 1-2.

<sup>9</sup> See Motorola Comments at 3.

<sup>10</sup> See LMCC Reply Comments at 3-4.

<sup>11</sup> 47 C.F.R. § 90.187(b).

<sup>12</sup> 47 C.F.R. § 90.7.

<sup>13</sup> See, e.g., Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Order*, WT Docket No. 99-87, 25 FCC Rcd 8861, 8863-64 ¶ 7 (2010) (applying waiver of narrowbanding rules equally to Public Safety and Industrial/Business Pools); Amendment of Part 90 of the Commission's Rules, *Second Report and Order and Second Further Notice of Proposed Rule Making*, WP Docket No. 07-100, 25 FCC Rcd 2479, 2487 § 22 (2010) (declining to split Part 90 into separate rule parts for different classes of licensees because commenters believed that changing the organizational structure of Part 90 was "unnecessary and would likely (continued....)

90.187(b) should have the same meaning for Industrial/Business Pool licensees, Public Safety Pool licensees, and Public Safety Pool eligibles operating on Industrial/Business Pool frequencies. In light of our discretion as to whether or when to address requests for clarification or declaratory ruling,<sup>14</sup> we decline to issue a blanket response on the definition of harmful interference. Instead, the determination of harmful interference shall continue to require a case-by-case analysis of each specific situation.

7. Accordingly, IT IS ORDERED that the request for clarification filed by Icom America, Inc. on August 17, 2011 IS DENIED to the extent set forth above.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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result in a more complex regulatory burden being placed on Commission licensees without any likely benefit to the licensees or the Commission”).

<sup>14</sup> See, e.g., Feature Group IP, *Order on Reconsideration*, WC Docket No. 07-256, 25 FCC Rcd 8867, 8873 ¶ 10 & n.40 (2010) (citing, e.g., *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C. Cir. 1973) (“An administrative agency should not be compelled to issue a clarifying statement unless its failure to do so can be shown to be a clear abuse of discretion.”)).